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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/059,562

04/14/1998

TOSHIMITSU KONUMA

0756-1790

8686

31780

7590

08/13/2002

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EXAMINER

NGUYEN, DUNG T

ART UNIT

PAPER NUMBER

2871

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/059,562

Applicant(s)
Konuma et al.

Examiner
Dung Nguyen

Art Unit
2871



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 28, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-33, 49-51, 55-58, 65-67, 69, 99, 106-110, and 115-135 is/are pending in the application.
- 4a) Of the above, claim(s) 99, 106-108, 116-119, 122, 123, and 128-132 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-33, 49-51, 55-58, 65-67, 69, 109, 110, 115, 120, 121, 124-127, a is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 22 6) ☐ Other:

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Response to Arguments

Applicant's response dated 05/28/2002 has been received and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

1. Claims 31-32, 109, 120 and 124 stand rejected under 35 U.S.C. 102(b) as being anticipated by Tsuboyama, US Patent No. 4,796,979, as stated in the previous office action.

Claim Rejections - 35 USC § 103

2. Claims 33, 49-51, 55-58, 65-67, 110, 115, 121, 125 and 127 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboyama, US Patent No. 4,796,979 , in view of Tsuboyama, US Patent No. 4,775,225, as stated in the previous office action.
3. Claims 133-135 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboyama, US Patent No. 4,796,979 , in view of Yamamoto et al., US Patent No. 5,221,980, as stated in the previous office action.

Double Patenting

4. Claims 31-33, 49-51, 55-58, 65-67, 69, 109-110, 115, 120-121, 124-127 and 133-135 stand rejected under the judicially created doctrine of obviousness-type double patenting as being

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unpatentable over claims 1-4 and 17-19 of U.S. Patent No. 5,594,569 as stated in the previous office action.

Remarks

5. Applicant's arguments filed 05/28/2002 have been fully considered but they are not persuasive.

In response to applicant's arguments, the recitation "said resin is formed by disposing a mixture of the liquid crystal and a curable resin between the pair of substrates and curing said curable resin" has not been given patentable weight because the recitation recites a one-step process which does not further limit the structure of the device claims (emphasis added)

It should also be noted that "[E]ven though product-by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of product ion. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). Therefore, the process limitation does not have patentable weight. See MPEP § 2113.

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Conclusion


6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Dung Nguyen whose telephone number is (703) 305-0423. The fax phone number for this Group is (703) 746-7730.

Any information of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0956.

DN
08/08/2002


William L. Sikes
Supervisory Patent Examiner
Group 2871